

AG Contract No. KR02-0770TRN  
ADOT ECS File No. JPA 01-195  
Project No.: TEA-FLA-0(4)P  
TRACS No.: SL460 01C  
Project. US 89 – Railhead To Snowflake Rd.  
5Yr Item No.: 75603

**INTERGOVERNMENTAL AGREEMENT**  
BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF FLAGSTAFF

THIS AGREEMENT is entered into 19 March, 2003, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and THE CITY OF FLAGSTAFF acting by and through its MAYOR and CITY COUNCIL (the "City").

**I. RECITALS**

1 The State is empowered by Arizona Revised Statutes Section 28-401 and 28-334 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State

2 The City is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City

3 Congress has authorized appropriations for, but not limited to, the construction of streets and primary, feeder and farm-to-market roads; the replacement of bridges, the elimination of roadside obstacles; and the application of pavement markings

4 Such project within the boundary of the City has been selected by the City; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the Federal Highway Administration (FHWA) for its approval.

5 The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the City by reason of federal law and regulations under which funds for the project are authorized to be expended.

---

NO. 25893  
Filed with the Secretary of State  
Date Filed: 03/19/03

Janice K. Brewer  
Secretary of State

By: Vincent J. Hausenwald

6. The City, in order to obtain federal funds for the construction of the project, is willing to provide City funds to match federal funds in the ratio required or as finally fixed and determined by the City and FHWA, including actual construction engineering and administration costs (CE).

7. The work embraced in this agreement is the Design and Construction of Mohave Wash Pathway, and the estimated costs are as follows:

|   |                   |
|---|-------------------|
| Estimated Construction Cost                         | \$ 934,000.00     |
| * 5% Surcharge of Construction Cost                 | \$ 46,700.00      |
| Construction Cost sub-total                         | \$ 980,700.00     |
| 15% Construction Engineering Cost                   | \$ 147,105.00     |
| Total Construction Cost                             | \$1,127,805.00    |
| <br>Federal-aid funds @ 94.3% of \$530,223.00       | <br>\$ 500,000.00 |
| <br>City of Flagstaff Funds @ 5.7% of \$530,223.00  | <br>\$ 30,223.00  |
| City of Flagstaff @ 100%                            | \$ 597,582.00     |
| Total City of Flagstaff Construction Matching Funds | \$ 627,805.00     |

\*A five percent surcharge is added per Local Government Engineer Memo of April 4, 1994.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

## **II. SCOPE OF WORK**

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. If such project is approved for construction by FHWA and the funds are available for construction, the City will and does hereby designate the State as authorized agent for the City. The State hereby agrees to be authorized agent for the City, and with the aid and consent of the City and the FHWA will proceed to advertise for, receive and open bids, and subject to the concurrence of the City and the FHWA, enter into a contract with a firm on behalf of the City to whom the award is made for the construction of the project; such project to be performed, completed, accepted and paid for in accordance with the instructions and requirements of the City and the Standard Specifications for Road and Bridge Construction of the Arizona Department of Transportation. The State will enter into a Project Agreement with FHWA on behalf of the City covering the work embraced in said construction contract and will request the maximum federal funds available, including construction engineering and administration costs. Should costs exceed the maximum federal funds available, it is understood and agreed that the City will be responsible for any overage.

b. Should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the City shall be obligated to incur and will pay for said increased costs.

2. Prior to the solicitation of bids, the City shall deposit funds with the State in the amount determined to be necessary to match federal funds in the ratio required.

3. The City shall acquire the necessary right-of-way and hereby certifies that all necessary rights-of-way have been or will be acquired prior to advertisement for bid.

4. The City shall remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby

certifies that all obstructions and encroachments have been or will be removed there from, prior to the start of construction.

5. The City shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the right of way. In the event of any unauthorized encroachment or improper use, the City shall take all necessary steps to remove or prevent any such encroachment or use.

6. Upon completion of construction, the City shall provide for, at its own costs and as an annual item in its budget, proper maintenance, including, but not limited to, traffic signals, signs, islands curbs and markings necessary for the purpose of regulating, warning and guiding traffic, all in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways.

### **III. MISCELLANEOUS PROVISIONS**

1. The State assumes no financial obligation or liability under this agreement. The City assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the City and that the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation or attorneys' fees.

2. The cost of the design, construction and construction engineering work covered by this agreement is to be borne by FHWA and City, each in the proportion prescribed or as fixed and determined by the FHWA as stipulated in this agreement. Therefore, City agrees to furnish and provide the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall remain in force and effect until completion of the work; provided, however, that any provisions in this agreement for maintenance shall be perpetual, unless assumed by another entity.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. In the event of any controversy, which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

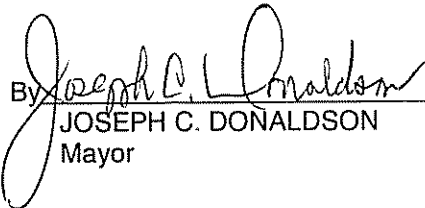
Arizona Department of Transportation  
Joint Project Administration  
205 S. 17th Avenue – Mail Drop 616E  
Phoenix, AZ 85007  
FAX (602-712-7424  
[lgrandy@dot.state.az.us](mailto:lgrandy@dot.state.az.us)

City of Flagstaff  
City Manager  
211 W. Aspen Avenue  
Flagstaff, AZ 86001-5399

9. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

**CITY OF FLAGSTAFF**

By   
JOSEPH C. DONALDSON  
Mayor

**STATE OF ARIZONA**  
Department of Transportation

By   
BILL HIGGINS, P.E.  
Deputy State Engineer

ATTEST:

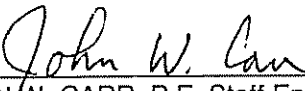
By   
Elizabeth A. Burke  
City Clerk

JPA 01-195

RESOLUTION

BE IT RESOLVED on this 15th day of January, 2002, that I, the undersigned VICTOR M. MENDEZ, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Intermodal Transportation Division, to enter into an agreement with the City of Flagstaff, for the purpose of defining responsibilities for the design and construction of a multi-use path on the City's Route 66/US 89 shared use pathway within ADOT right-of-way, for the benefit and safety of the traveling public.


Therefore, authorization is hereby granted to draft said agreement, which, upon completion, shall be submitted to the Deputy State Engineer for approval and execution.

  
\_\_\_\_\_  
JOHN W. CARR, P.E. Staff Engineer  
Intermodal Transportation Division  
Development Group  
for VICTOR M. MENDEZ, Director

### CERTIFICATION

I, Margie Brown, Deputy City Clerk of the City of Flagstaff, Arizona, do hereby certify that the attached is a full, true, and correct copy of Resolution No. 2003-07 adopted by the Flagstaff City Council at their Meeting held February 4, 2003.

IN WITNESS WHEREOF, I have hereunto set my hand and impressed the official Seal of the City of Flagstaff, this 3rd day of March, 2003.

  
DEPUTY CITY CLERK

(SEAL)

RESOLUTION NO. 2003-07

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE ARIZONA DEPARTMENT OF TRANSPORTATION AND THE CITY OF FLAGSTAFF FOR PATH AND LANDSCAPING ENHANCEMENTS FOR THE US 89 HIGHWAY CORRIDOR.

WHEREAS, US 89 functions as an important gateway corridor into the City of Flagstaff; and

WHEREAS, the Arizona Department of Transportation has approved a contribution of \$500,000 in enhancement funds to this project; and

WHEREAS, the City of Flagstaff desires streetscape and path improvements along this important highway consistent with established goals; and

WHEREAS, the City and ADOT have negotiated an approved scope of work, cost estimate, and cost sharing for the desired work; and

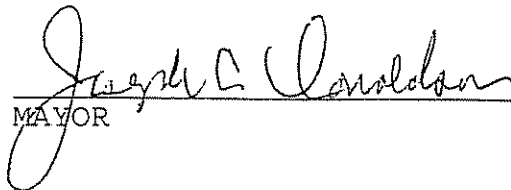
WHEREAS, in order to formalize this agreement, including the scope of work and the financial contributions of both the City of Flagstaff and Arizona Department of Transportation, both agencies desire to enter into an intergovernmental agreement (JPA 01-195) regarding this path and streetscape project; and

WHEREAS, the City Council has read and considered the staff summary report and proposed amendment and finds that it is in the best interests of the City to proceed with this IGA;

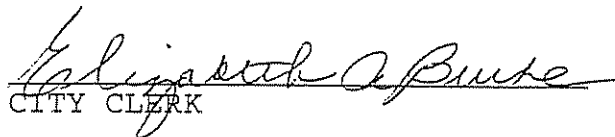
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. That the Intergovernmental Agreement between the Arizona Department of Transportation and the City of Flagstaff be hereby accepted and approved, and the Mayor be authorized and directed to execute the Intergovernmental Agreement on behalf of the City of Flagstaff.


PASSED AND ADOPTED by the Council and approved by the Mayor of the City of Flagstaff, this 4th day of February, 2003.

  
MAYOR

ATTEST:

  
CITY CLERK

APPROVED AS TO FORM:

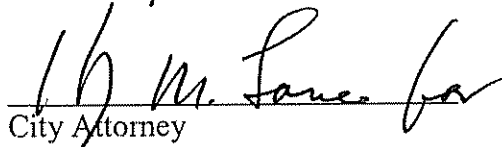
  
CITY ATTORNEY



APPROVAL AS TO FORM BY THE CITY OF FLAGSTAFF CITY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY OF FLAGSTAFF and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. I express no opinion as to the authority of the State of Arizona to enter into this agreement.

Dated this 18<sup>th</sup> day of February, 2003.

  
City Attorney



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

TERRY GODDARD  
ATTORNEY GENERAL

CIVIL DIVISION  
TRANSPORTATION SECTION  
WRITER'S DIRECT LINE: 602.542.8855

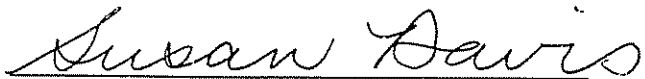
INTERGOVERNMENTAL AGREEMENT  
DETERMINATION

A.G. Contract No. KR02-0770TRN (JPA 01-195), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED March 12, 2003.

TERRY GODDARD  
Attorney General

  
SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

/ss

att.